

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 9, 2022

Hearing Room 301

2:00 PM

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Chapter

#0.00 Unless other arrangements have been made in advance with the Court, all appearances for this calendar will be via Zoom and not via Court Call. [See Judge Kaufman's posted procedures titled "phone/video appearances" on the Court's webpage.] All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

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Tentative Ruling:

- NONE LISTED -

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1:21-11450 Roberto C. Hernandez

Chapter 11

**#1.00 Confirmation hearing re: Amended Plan or Reorganization
Chapter 11 Subchapter V Petition**

Docket 119

Tentative Ruling:

With respect to confirmation of the debtor's Amended Plan of Reorganization (Subchapter V), as Modified [doc. 119] (the "Amended Plan"), the debtor must address the following issues:

The statutory requirements for confirmation of a subchapter V plan are contained in 11 U.S.C. § 1191. Given that there are impaired classes of claims that have not accepted the Amended Plan, in his confirmation brief and the filed declarations, the debtor has not sufficiently addressed pertinent confirmation requirements under § 1191.

A subchapter V chapter 11 plan may be confirmed as a consensual plan under 11 U.S.C. § 1191(a), or as a nonconsensual plan under § 1191(b). To be confirmed under either provision, the plan must meet the requirements of § 1129(a)(1)–(7), (9), (11)–(14), and (16). A consensual plan also must meet the requirements of § 1129(a)(8) and (a)(10).

If a subchapter V plan fails to satisfy either of those additional requirements, the plan may be confirmed as a nonconsensual plan under § 1191(b), if the plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1191(b).

Here, because all impaired classes did not vote to accept the Amended Plan, the Court must look to § 1191(b) to determine if the Amended Plan may be confirmed. To be confirmed, the Amended Plan must satisfy the fair and equitable test. The fair and equitable test for a subchapter V plan is set forth in § 1191(c)(3).

11 U.S.C. § 1191(c)(3) sets forth the following confirmation requirements:

- (1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

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(2) As of the effective date of the plan -

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3) (A)(i) The debtor will be able to make all payments under the plan; or (ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(B) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

11 U.S.C. § 1191(d) provides:

For purposes of this section, the term "disposable income" means the income received by the debtor and that is not reasonably necessary to be expended for –

(1)(A) the maintenance or support of the debtor or a dependent of the debtor; or (B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or (2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

In *In re Pearl Resources, LLC*, the bankruptcy court held that the debtor's subchapter V, chapter 11 plan satisfied section 1191(c)(3)(B) because the debtor's plan provided for the debtor to sell property to satisfy allowed claims, if the debtor had not otherwise paid the allowed claims from its disposable income. *In re Pearl Resources, LLC*, 622 B.R. 236, 270 (Bankr. S.D. Tex. 2020).

For the Court to determine that the Amended Plan is fair and equitable, the debtor must address each of the applicable provisions of 11 U.S.C. § 1191(c)(3), with respect to each impaired class of claims that did not accept the Amended Plan. The debtor

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has not yet done so.

To the extent that the debtor is relying on the purported guaranty of payments due under the Amended Plan by Dennis Giangreco (in an amount not to exceed \$250,000), what is the mechanism and timing for creditors who have experienced a default in plan payments to access that guaranty?

In addition, in accordance with §§ 1191(a) and 1129(a)(3), the debtor must demonstrate that he has proposed the Amended Plan in good faith. In his objection, judgment creditor Rafael Hernandez asserts that the Amended Plan has not been proposed in good faith because it does not address the debtor's prepetition transfer of valuable real property which may be subject to avoidance as a fraudulent transfer.

Although the debtor held full title to that real property, before filing his chapter 11 petition, the debtor transferred that property to another entity, Cocoville, LLC, in which the debtor claims to hold only a 50% interest [doc. 126]. The Amended Plan provides for Cocoville, LLC to retain title to that real property (while also representing that the debtor may access the equity in that real property to make payments due under the Amended Plan).

Moreover, pursuant to the Amended Plan, Cocoville, LLC may refinance the debt secured by that real property, or borrow against that real property, at any time, apparently without any limitations, e.g., without limiting the use of the borrowed funds to paying allowed secured and nonpriority unsecured claims under the Amended Plan.

The debtor has not addressed the contention of Rafael Hernandez that these aspects of the Amended Plan violate §§ 1191(a) and 1129(a)(3).

Finally, in addition to the feasibility issues raised by creditors and the United States Trustee, including the debtor's failure to provide reports of the earnings of RC Automotive & Collision LLC for April, May and June 2022, it appears that the plan projections do not provide for the debtor's personal income tax liabilities which arise in 2022 and thereafter.

With respect to the confirmation issues raised by the parties, do any of the objecting creditors or the United States Trustee seek to have an evidentiary hearing at which they can cross-examine the debtor and other witnesses? If so, the Court will set a date for such an evidentiary hearing to take place.

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Party Information

Debtor(s):

Roberto C. Hernandez

Represented By
Raymond H. Aver

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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Chapter 11

#1.10 Status conference re chapter 11 subchapter V case

fr. 10/21/21; 12/9/21; 1/27/22; 3/24/22; 5/26/22

Docket 1

Tentative Ruling:

Has the debtor filed his income tax returns for 2021? If not, when will he do so?

Party Information

Debtor(s):

Roberto C. Hernandez

Represented By
Raymond H. Aver

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:22-10444 Schrillo Company, LLC

Chapter 11

#2.00 Status conference re: chapter 11 subchapter V case

Docket 1

Tentative Ruling:

The bar date has been set for **June 22, 2022 (non-gov't)** and **October 11, 2022 (gov't)**.

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **July 12, 2022**.

The parties should address the following:

When does the debtor anticipate filing its 2021 income tax returns?

Continued chapter 11 case status conference to be held at **2:00 p.m. on August 25, 2022**.

The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the Subchapter V Trustee, not later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The status report must address the following:

If the debtor expects that the plan will be a nonconsensual plan, i.e., a plan confirmed under 11 U.S.C. § 1191(b), why does it expect that?

Any additional information the debtor would like to disclose to the Court concerning this chapter 11 case or the plan (e.g. executory contracts or unexpired leases or sale of real and/or personal property).

The Subchapter V Trustee must file an updated declaration not less than seven (7) days prior to the continued status conference that discusses, among other things,

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progress made toward a consensual plan or the debtor's plan confirmation prospects.

The Court will prepare an order continuing the status conference and setting the deadlines to file and serve the related status report and the declaration of the Subchapter V Trustee.

Party Information

Debtor(s):

Schrillo Company, LLC

Represented By
Leib M Lerner
Douglas Harris

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:22-10545 Guarachi Wine Partners Inc.

Chapter 11

#3.00 Application of Chapter 11 Debtor to Employ Levene, Neale, Bender,
Yoo & Golubchik L.L.P., As General Bankruptcy Counsel

Docket 41

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Guarachi Wine Partners Inc.

Represented By
Ron Bender
Todd M Arnold

Movant(s):

Guarachi Wine Partners Inc.

Represented By
Ron Bender
Ron Bender
Ron Bender
Todd M Arnold
Todd M Arnold
Todd M Arnold

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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1:22-10444 Schrillo Company, LLC

Chapter 11

**#4.00 Debtor's Motion for Entry of an Order Extending the Deadlines
of the Sale Procedures Order**

Docket 84

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Schrillo Company, LLC

Represented By
Leib M Lerner
Douglas Harris

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se